City of Lafayette Staff Report

For: City Council

By: Christine Sinnette, Senior Planner

Date Written: January 30, 2009

Meeting Date: February 9, 2009

Subject: Appeal by Richard Holt of the Planning Commission denial of:

HDP47-07 RICHARD W. HOLT (APPLICANT), LAMORINDA PROPERTIES (OWNER), R-10 ZONING: Request for a hillside development permit pursuant to section 6-2065(a)(8) of the Lafayette Municipal Code (LMC) for site and massing determination for a new, two-story single-family residence ~~3,507~~ ~~3,323~~ ~~2,898~~ 2,639 gross square feet in size on a vacant 26,340 square foot parcel within the Hillside Overlay District, located at the intersection of Sierra Vista Way and Sessions Road (Tract 5332 Lot 66); APN 232-052-019.

V17-08 RICHARD W. HOLT (APPLICANT), LAMORINDA PROPERTIES (OWNER), R-10 ZONING: Request for a variance pursuant to section 6-214 of the Lafayette Municipal Code (LMC) to allow ~~a front yard setback of 20 82 feet, a rear yard setback of 15 75 feet, a western side yard setback of 10 61 feet, an eastern side yard setback of 10 15 feet, and~~ a 5-foot setback from the trail easement for a new two-story, single-family residence ~~2,898~~ 2,639 gross square feet in size on a vacant 26,340 square foot parcel within the Hillside Overlay District, located at the intersection of Sierra Vista Way and Sessions Road (Tract 5332 Lot 66); APN 232-052-019.

On January 26, 2009, the City Council conducted a public hearing on the appeal where it received written and oral testimony including a written staff report dated January 26, 2009. After considering the matter, the City Council voted in favor of denial of the appeal 3-1-1 (Tatzin, Andersson, and Anderson voted affirmatively, Federighi voted against, and Anduri was absent, respectively) by Lamorinda Properties of the Planning Commission's denial of HDP47-07 and V17-08 for a siting and massing determination and variance for a single-family residence and to deny the applications with prejudice and directed staff to prepare a resolution for formal denial. See attached resolution.

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

In the Matter of:

Consideration of the appeal by Lamorinda Properties of the Planning Commission's denial of HDP47-07 and V17-08 for siting and massing determination for a single-family residence located at the intersection of Sierra Vista Way and Sessions Road (Lot 66 Tract 5332), APN 232-052-019	)	Resolution 2009-05

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAFAYETTE DENYING AN APPEAL BY LAMORINDA PROPERTIES OF THE PLANNING COMMISSION'S DENIAL OF HDP47-07 AND V17-08 AND DENYING HDP47-07 AND V17-08 WITH PREJUDICE

RECITALS

A. On November 14, 2007, Richard Holt filed an application for a siting and massing determination for a new single-family residence in the Hillside Overlay District located at the intersection of Sierra Vista Way and Sessions Road (Tract 5332 Lot 66). The project site is located in the R-10 zoning district.

B. On June 5, 2008 and July 3, 2008 the Planning Commission, following notification to the public in the prescribed manner, conducted public hearings where it received written and oral testimony including written staff reports dated June 5, 2008 and July 3, 2008. The Planning Commission considered the application and continued the matter to allow the applicant to submit a redesigned project.

C. On August 21, 2008, Richard Holt filed V17-08, a request for a variance to yard setbacks.

D. On August 21, 2008, the Planning Commission conducted a public hearing where it received written and oral testimony including a written staff report dated August 21, 2008. The Planning Commission considered the applications and continued the matter to September 4, 2008.

E. On September 4, 2008, the Planning Commission conducted a public hearing where it received written and oral testimony including a written staff report dated September 4, 2008 recommending approval of HDP47-07 and V17-08. The Planning Commission considered the application, directed staff to prepare a

resolution denying HDP47-07 and V17-08 because they could not make the required findings, and continued the matter to September 18, 2008.

F. On September 18, 2008, the Planning Commission adopted Planning Commission Resolution 2008-22 denying HDP47-07 and V17-08 for a siting and massing determination and variance to yard setbacks for a new single-family residence in the Hillside Overlay District.

G. On September 29, 2008, David Bowie filed a timely appeal on behalf of his client, Lamorinda Properties, of the Planning Commission's denial without prejudice of HDP47-07 and V17-08.

H. On November 10, 2008, the City Council, following notification to the public in the prescribed manner, conducted a de novo public hearing on the appeal where it received written and oral testimony including a written staff report dated November 10, 2008. The staff report included, but was not limited to, minutes, staff reports, exhibits, and correspondence from five Planning Commission meetings as well as supplemental correspondence and exhibits submitted by the City Attorney, the applicant, and the public. The City Council considered the appeal and continued the matter to December 8, 2008.

I. On December 8, 2008, the City Council conducted a de novo public hearing on the appeal where it received written and oral testimony including a written staff report dated December 8, 2008. The City Council considered the appeal and continued the matter to January 26, 2009 to allow the applicant to submit a redesigned project.

J. On January 26, 2009, the City Council conducted a de novo public hearing on the appeal where it received written and oral testimony including a written staff report dated January 26, 2009. After considering the matter, the City Council voted in favor of denial of the appeal 3-1-1 (Tatzin, Andersson, and Anderson voted affirmatively, Federighi voted against, and Anduri was absent, respectively) by Lamorinda Properties of the Planning Commission's denial of HDP47-07 and V17-08 for a siting and massing determination and variance for a single-family residence and to deny the applications with prejudice and directed staff to prepare a resolution for formal denial.

K. As noted in oral and written testimony during the various public hearings, there is a dispute between the property owner and the neighbors regarding the nature of a non-exclusive access and utility easement on the property and whether this easement encumbers the entire property ("Disputed Easement"). The Disputed Easement is a legal dispute between the property owner and the easement holders. The City Council in making its determination on the appeal and applications takes no position and makes no determination on the Disputed Easement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE, CALIFORNIA, FINDS AND DETERMINES AS FOLLOWS:

Section I
Findings of Fact

All of the findings and conclusions made by the City Council pursuant to this Resolution are based upon substantial evidence in the entire record before the City Council, and are not based solely on the information provided in this Resolution.

Section II
California Environmental Quality Act

The proposed project is exempt from the California Environmental Quality Act (CEQA) because CEQA does not apply to projects which the lead agency does not approve §21080(b)(5).

Section III
Specific Findings Necessary for a Variance Pursuant to Section 6-214, Lafayette Municipal Code

The City Council has evaluated the findings necessary for a variance pursuant to Section 6-214, Lafayette Municipal Code, (LMC) and has determined that a variance cannot be granted because it would constitute a grant of special privilege which is not generally available to other property in the vicinity and in the same land use district. §6-214(1). Approving the variance would unnecessarily place development too close to the trail easement and paved portion of the road.

Section IV
Findings Required for Approval of a Hillside Development Permit on an Existing Lot of Record Pursuant to Section 6-2071, Lafayette Municipal Code

The City Council has evaluated the findings required for approval of a hillside development permit on an existing lot of record pursuant to section 6-2017, LMC, and determines it cannot make the findings because the project is not in conformance with applicable zoning regulations because a variance to a yard setback is being requested and cannot be granted pursuant to section III, above. Although not considered native trees pursuant to section 6-1702(k), LMC, the size and location of the proposed house will require the removal of existing redwood, Canary Island pine, and California pepper trees and result in impacts to animal habitat and natural features. §6-2071(b) As proposed, development does not comply with the City's residential design guidelines because grading and foundations will occur within the dripline of trees and because a 2,639 gross square foot building is not compatible with surrounding land features and other development in the Sierra Vista Way neighborhood which has buildings with an average

gross square footage of 2,400 square feet. A smaller house of 2,000 to 2,200 gross square feet in size would be more compatible with the neighborhood. §6-2071(h)

Based on the above findings, the City Council hereby denies HDP47-07 and V17-08 with prejudice.

This resolution becomes effective upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a meeting held on February 9, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Don Tatzin, Mayor

Robbins, Joanne

From: Sinnette, Christine
Sent: Thursday, February 05, 2009 4:10 PM
To: Anderson, Mike; Andersson, Brandt; Anduri, Carl; Falk, Steven; Feds, Carol; Subramanian, M; Tanaka, Gene; Tatzin, Don; Robbins, Joanne
Cc: Merideth, Ann; Srivatsa, Niroop
Subject: FW: Mayor and City Council 2-4-09

LAW OFFICE OF DAVID J. BOWIE
Attorney at Law
2255 CONTRA COSTA BLVD., SUITE 305
PLEASANT HILL, CA 94523

DAVID J. BOWIE

Telephone (925) 939-5300
Facsimile (925) 609-9670
Dave@bblandlaw.com

February 4, 2009

Don Tatzin, Mayor
City of Lafayette
3675 Mt. Diablo Blvd, Suite 210
Lafayette, CA 94549

Members of the City Council
City of Lafayette
c/o Christine Sinnette, Senior Planner
3675 Mt. Diablo Blvd, Suite 210
Lafayette, CA 94549

Re: Request to Remove Item from Consent Calendar and Request for Reconsideration of Denial of Appeal by Richard Holt-HDP47-07-Request for Hillside Development Permit and V17-08-Request for Variance

Dear Mayor Tatzin and City Council Members:

I have prepared this letter on behalf of Lamorinda Properties and Richard Holt, applicants for a Hillside Development Permit and for a Variance all with respect to a certain vacant 26,340 square foot parcel located within the Hillside Overlay District at the intersection of Sierra Vista Way and Sessions Road (Tract 5332, Lot 66) (APN 232-052-019). The purpose of this letter is to request that the subject matter be removed from the Consent Calendar at the Council's next meeting and for reconsideration of the City Council action taken at its hearing of January 26, 2009. In that hearing, the Council denied the two applications before it on appeal. At a prior hearing, the Council indicated that it proposed to reverse the Planning Commission's earlier denial of the same applications and approve a Phase I siting and

massing study. It is submitted that the change of course exhibited by the Council at its most recent meeting as to these applications occurred solely because of errors of both fact and law. Reconsideration is requested and urged.

1. Status of the Applications:

As was emphasized by the applicant during the course of prior hearings, the current referenced application relate merely to Phase I of a permit approval process—a siting and massing study preparatory to Design Review by the Design Review Commission. The particular applications are far more detailed and comprehensive than customarily required at this stage of a development plan, variance and Design Review application. It is submitted that the City Council overstepped its role at this stage of these proceedings and that it should instead have approved the appeal, reversed the Planning Commission and referred the applications to the Design Review Commission for further study and final action. That referral could certainly include a direction to consider a reduction in size if the Design Review Commission determined that such reduction would also mitigate perceived design impacts.

2. The Easement Issue:

As members of this Council are well aware, neighbors in opposition to the subject applications have long maintained that the property, known as Lot 66, was and is encumbered as to its entirety lot line to lot line by an access easement for right of way purposes. It has been the argument of the neighbors that the City cannot take action with respect to any development plan approval without somehow denigrating the neighbors' easement rights and private property ownership interests. Some neighbors have gone so far as to argue that an approval of the Holt applications by the City would result in a "taking" of their property rights.

On repeated occasions during the course of hearings before City Commissions, the City attorney has advised that the City cannot adjudicate private property rights and interests between private property owners. The City was consequently urged to take action on the applications before it without regard to contentions by neighbors or the applicant as to their respective property interests in Lot 66. Despite the City attorney's advice, comments from members of the Council suggest that the contentious wrangling over easement issues was a significant factor in the ultimate determination to uphold the appeal and deny the applications insofar as the Phase I siting and massing study was concerned. In actual fact, the Council should have refused to consider any easement issues and should have acted solely upon the applications before it. In light of the controversial easements, however, the following discussion has been presented.

A. Record Title:

By letter dated May 29, 2008, the applicant detailed research into record title which confirmed that neighbors' contentions regarding the easement rights were simply inaccurate and misunderstood. As set forth in greater detail therein, the critical document was and is an Indenture Agreement between Western Title, Sessions, and Alberdan Inc., recorded January 31, 1967 in Book 5296 at Page 435. That document eliminated various rights of way and created new rights of way over a 50 foot wide strip of land. The Indenture specifically granted to Western Title a roadway easement with the right to alter the location width and grade of the easement described as a "strip of land on Lot 66 known as Sessions

Drive". The Indenture specifically provided that the location of Sessions Drive would alter the grant of easement in a consistent fashion. The neighbors' claims as to easement rights over the entirety of Lot 66 derive from a later grantor who was not the grantee of the rights granted Western Title under the terms of the Indenture. That later grantor was without right to convey easement rights he did not own to the neighbors whose claims regarding such rights were derivative from that particular grant of title.

B. Regardless Of Record Title, There Is No Easement Which Extends From Lot Line To Lot Line Of Lot 66.

Regardless of the status of record title, California Law abhors a forfeiture of property rights and/or unreasonable claims of easement rights across burdened properties typically known as servient tenements. Without submitting to this counsel a detailed legal brief, it might be noted that a 1995 Appellate Court Case, Scruby vs. Vintage Grapevine, Inc 37 Cal App 4th 697 discusses in detail the applicable legal rules under directly analogous circumstances. The following are the significant points of law cited by that Court:

(i). The claimed owner of any dominant tenement must use his or her easements and rights in such a way as to impose as slight a burden as possible on the servient tenement.

(ii). The servient estate may continue use of the easement area so long as that use does not interfere reasonably with the easements purpose. This is a question of fact.

(iii). Despite an express grant of easement, the dominate tenement has no right to use discrete portions of the easement which do not relate to insufficient ingress and egress to and from the property.

(iv). The burden on the servient tenement can be properly measured by the use and purpose for which the easement has been granted. Physical conditions, character of the servient tenement, requirements of the grantee play a significant role in the determination of the controlling intent of the original parties.

(v). The Courts should determine the true intent of the parties irrespective of dimensions of a particular easement and express dimensions of an easement far greater than necessary will not be enforced against the servient estate.

The application of the foregoing legal principals makes clear that the neighbors could not possibly have lot line to lot line easement rights over Lot 66. Such a grant would be as to an estate far greater than a mere easement for right of way purposes. Here, there is no single private road anywhere within Lafayette with a width approaching 50 feet let alone extending the entire distance of Lot 66 measured from lot line to lot line. There is no road which might be constructed across the portion of Lot 66 proposed for development as no such construction could possibly meet the slope requirements imposed by the Fire District or the City. There is also demonstrated historical use of the existing Lot 66 without any indication suggesting that a larger portion of that lot might in any fashion be required for right of way access purposes.

As a matter of record title and as a matter of the straightforward application of legal principles and applicable case law, the neighbors simply cannot be deemed to have the easement rights they claim. There is an absolute right to develop this property as it is a lawful legal parcel which does not in any way unreasonably interfere with the neighbors' easement rights. The City should and must consider these applications on their merits and act accordingly.

3. Siting and Massing Study:

No one might seriously suggest that siting of proposed development on Lot 66 might be anywhere other than as submitted in the pending applications. Staff has confirmed siting to be appropriate; the Planning Commission acknowledged the siting to be appropriate; no neighbor has ever suggested that another site than that proposed might be suitable for development. There are no physical constraints which might preclude that site for development. There is simply no basis to deny the Holt applications based on the proposed development site.

There is similarly no rational basis upon which the proposed massing might be declined. That is, the proposed home was and is consistent in size with other homes in the area; it does not adversely impact the privacy or views of any other property and/or home; a reasonable footprint requires some variation of a two story home; and the reduction of a further 10% in square footage would have no impact from a mass standpoint on the only adjoining neighbor conceivably impacted.

It might be noted that Mayor Tatzin requested a reduction in size of the proposed development from that presented in the initial City Council Hearing. The revised presentation reduced size by approximately 10%. Mayor Tatzin suggested that perhaps a further 5 to 10% of size might be reduced. That reduction in size would be immaterial from a perception standpoint and, since the project is consistent with neighborhood development would be an arbitrary and capricious request. It is submitted that the project as presented should be approved as to siting and massing and referred to the Design Review Commission for further detailed review. The Design Review Commission could mitigate mass impacts through architectural means or even require some reduction in size if indeed that would impact upon mass. The point is that the role of the Design Review Commission is to address such aesthetic issues as mass and is better suited to fulfill that role than is the City Council at an early stage of this project on appeal from the Planning Commission.

4. Conclusion:

It is respectfully requested that reconsideration of these applications and City Council action taken January 26 be granted.

Very truly yours,

David J. Bowie